

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2967 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

=====

1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

@

PRAVINBHAI RAMANBHAI PARMAR

Versus

STATE OF GUJARAT

-----  
Appearance:

MR YATIN SONI for Petitioner No. 1-2

MR KC SHAH, APP for Respondent No. 1  
-----

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 24/06/2002

ORAL JUDGEMENT

1. Rule. Mr.KC Shah, learned APP appears and waives service of notice of Rule on behalf of respondent-State.

2. The learned Additional Sessions Judge, Kheda, Camp at Anand has, while releasing the petitioners-accused (husband and wife) on Regular Bail vide order dated 22nd February, 2002 recorded in Criminal Misc. Application No.49/2002 who have been arrested in

connection with the I CR No.85/2000 registered with the Dakor Police Station for commission of the alleged offences punishable under Sections 366, 380 and 114 of the Indian Penal Code pursuant to the complaint filed by the father of the petitioner no.2, imposed unusual condition upon the petitioners to pay a sum of Rs.15,000=00 to the complainant, which is the subject matter of challenge in this petition filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') at the instance of the petitioners - accused.

3. An FIR came to be lodged against the petitioners in connection with crime registered vide I CR No.85/2000 at Dakor Police Station for commission of the alleged offences punishable under Sections 366, 380 and 114 of the Indian Penal Code, pursuant to the complaint lodged by the father of the petitioner no.2. In the said complaint, it is alleged that the petitioner no.1 has kidnapped/abducted the petitioner no.2, who is his daughter. It is also alleged against the petitioner no.2 that at the time of leaving his house, she has taken ornament and cash worth Rs.15,000=00 with her, therefore, both the petitioners have committed offences punishable under Section 380 of the Indian Penal Code as well.

4. Pursuant to the said FIR, investigation was put into motion and the petitioners were arrested. Thereafter, both the petitioners applied for regular bail before the learned Additional Sessions Judge, Camp at Anand. The learned Sessions Judge has, while releasing both the petitioners, imposed the condition that they shall be released only if they shall pay Rs.15,000=00 to the complainant within a period of 30 days from the date of order, which has given rise to the present petition at the instance of the accused.

5. Mr.Yatin Soni, learned advocate for the petitioner has contended that the order directing the petitioners to pay Rs.15,000=00 to the complainant while releasing on bail is unusual which tantamount to denial of bail, therefore, imposing the condition to pay Rs.15,000=00 is required to be quashed and set aside. Supporting his contention, learned advocate relied upon two reported decisions of the Supreme Court.

- (1) SANDEEP JAIN V. NATIONAL CAPITAL TERRITORY OF DELHI [2000 AIR SCW 248]; and
- (2) M.SREENIVASULU REDDY V. STATE OF TAMIL NADU [2001 AIR SCW 2381].

6. Mr.KC Shah, learned APP who appears for

respondent State, while supporting the order, urged that notice may be issued to the complainant to ascertain under what circumstances the condition to pay Rs.15,000=00 has been imposed.

7. I have considered the submission advanced by the learned advocates for the parties and have perused the averments made in the memo of petition and grounds set out therein. Moreover, I have also perused the order dated 22nd February, 2002 recorded in Criminal Misc.Application No.49/2002 by the learned Additional Sessions Judge, Camp at Anand, by which the petitioners came to be released on regular bail upon furnishing personal bond as well as surety bond of Rs.5,000=00 and also on paying Rs.15,000=00 to the complainant.

8. In the case of Sandeep Jain (Supra), the Supreme Court has held that, "order was passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs.2 lacs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount." It is further observed that, "accused can not be detained in custody endlessly for his inability to pay the amount in the range of Rs.2 lacs."

9. In the case of M.Sreenivasulu Reddy (Supra), the Supreme Court has held that, while releasing the accused on anticipatory bail, who has been charged for the offences punishable under Sections 409, 420 of the Indian Penal Code, ordering the accused to deposit Rs.50 crores in installments as a condition of grant of bail, is not reasonable and proper.

10. The sum and substance of the ratio laid down by the Supreme Court in the aforesaid two decisions is that while granting the bail if an onerous condition is imposed, it tantamount to denial of bail.

11. Applying the principle laid down by the Supreme Court in the aforesaid two decisions to the facts of the present case, it is seen from the contents of the FIR that both the petitioners are major, therefore, the allegations and averments made in the FIR by the father of the petitioner no.2 is ill founded. Not only that both the petitioners have got married and therefore, naturally the offence under Sections 363 and 366 of the Indian Penal Code as alleged in the FIR is not made out.

So far as the offence under Section 380 of the Indian Penal Code as alleged in the FIR is concerned, it is nowhere mentioned in the order whether the said muddamal articles have been recovered or not. Therefore, it is none of the functions to compensate the complainant by the accused at pretrial stage.

12. Seen in the above context the order which is impugned is not sustainable, therefore, the same is liable to be quashed and set aside. Hence,, the petition deserves to be allowed by granting relief as prayed for.

13. For the foregoing reasons, petition succeeds and accordingly it is allowed. The condition imposed upon the petitioner to pay Rs.15,000=00 to the complainant within a period of 30 days, while releasing the petitioners on bail, is quashed and set aside. Rest of the conditions mentioned in the order while releasing the petitioners would remain intact and operative.

14. Rule is made absolute. Direct service is permitted.

( A.M. Kapadia, J. )  
/sakka